IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

OP.No. 440 of 2000(B)

PETITIONER:

THE SCHEDULED CASTES & SCHEDULE TRIBES RESERVATION PROTECTION COUNCIL, ERNAKULAM,
REG.NO.ER/84/96, REP.BY GENERAL SECRETARY, RADHAKRISHNAN V.S.,
S/O. SUBRAN, AGED 36 YEARS, VEDEPARAMBIL HOUSE,
AYYAMPILLY P.O., ERNAKULAM DIST.

BY ADV. SRI.K.S.MADHUSOODANAN
SRI.C.P.PEETHAMBARAN
SRI.A.B.SUBIRE
SRI.C.P.REJI
SRI.T.N.SURESH
SRI.T.K.ANIRUDHAN

RESPONDENTS:
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1. STATE OF KERALA TO BE REP.BY SECRETARY, REVENUE DEPARTMENT, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

2. DISTRICT COLLECTOR, TRICHUR.

3. TAHSILDAR, MUKUNDAPURAM TALUK.

4. ANTONY, S/O. CHENGINIYADAN PAVUNNI, PAZHOOKARA DESOM, ANNALLOOR VILLAGE, MUKUNDAPURAM TALUK

BY ADV. SRI.V.V.SURENDRAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 02.03.2007, ALONG WITH OP NO. 21206 OF 1999, THE COURTON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.440/2000

ORDERS ON C.M.P.7000/2000 & C.M.P.652/2000 IN O.P.440/2000
DISMISSED

02.03.2007. SD/- S. SIRI JAGAN, JUDGE.

APPENDIX

PETITIONERS EXHIBITS

EXT.P1: TRUE COPY OF THE AGREEMENT DATED 9.9.1982 EXECUTED BY SRI. CHOTHI AND 4TH RESPONDENT.

EXT.P2: TRUE COPY OF THE COMPROMISE PETITION DATED 2.9.86 FILE DBY THE 4TH RESPONDENT AND SRI. CHOTHI IN O.S.111.03.

EXT.P3: TRUE COPY OF THE REPRESENTATION DATED 30.10.98 SUBMITTED BY THE PETITIONER ORGANISATION BEFORE THE 2ND RESPONDENT.

EXT.P4: TRUE COPY OF THE ORDER NO.B3.4877/99 DATED 1.7.99 OF THE 2ND RESPONDENT.

/TRUE COPY/

PA TO JUDGE.

S.SIRI JAGAN, J.

O.P.NOS. 21206/99 &
440 OF 2000

JUDGMENT

02.03.2007

S. SIRI JAGAN, J.

O.P.NO. 21206/99 &
O.P.440 OF 2000

DATED THIS THE 2nd DAY OF MARCH, 2007

JUDGMENT

O.P.21206/99 is filed by one Sri.C.P. Antoney and O.P.440/2000 is filed by S.C./S.T. Reservation Protection Council (hereinafter referred to as the 'Council'). Sri. Antoney entered into an agreement for sale in respect of 37 ½ cents of property in survey No.570 of Annalloor Village of Mukundapuram Taluk. The said property was originally in the possession and enjoyment of one Chothi. The said Chothi did not honour the agreement. Sri. Antoney filed O.S.No.111/83 before the Sub Court, Irinjalakuda for specific performance of the agreement for sale. The suit was decreed. In the meanwhile daughters of the said Chothi, namely Smt. Kali and Valliamma filed O.S.No.1894/86 before the Munisff's Court, Irinjalakkuda based on a patta alleged to have been obtained by them in respect of 19 ½ cents out of the 37 ½ cents. That suit was dismissed holding that the patta said to have been obtained by the said Kali and Valliamma is not valid in law. The said Kali and Valliamma filed A.S.34/91 before the Addl. Sub Court Irinjalakuda and being unsuccessful, filed S.A. 4/94 before this Court. In the said S.A. this

Court also confirmed the trial Court judgment. In the meanwhile, pursuant to the decree in O.S.111/83, the Sub Judge, Irinjalakuda executed a sale deed in favour of Sri. Antoney in respect of the said 37 ½ cents which is produced as Ext.P1 in O.P.21206/99. Eventhough that sale deed was executed on 8.2.94., the petitioner had to wait till 22.1.97 for getting actual possession of the land through the Court, as evidenced by Ext.P2 delivery 'kaichit'.

2. While Sri. Antoney was in possession of the land as above, the Council filed a petition before the District Collector, Thrissur, complaining that the land occupied by sri. Antoney is puramboke land and proceedings under Land Conservancy Act should be initiated for vacating him from the land. They approached this Court by filing O.P.23872/98 and by Ext.P5 judgment this Court directed the District Collector to consider and pass appropriate orders on Ext.P3. Accordingly, the District Collector considered the complaint filed by the Council and passed Ext.P6 order in which it was found that leaving an extent of 7 cents assigned to Chothi the balance 30 ½ cents are Government land. However, the District Collector noted that the Antoney had filed an application for assignment of the property and finally Ext.P6 order directed that the Tahsildar, Mukundapuram Taluk should take into account the fact that Antoney is in possession of the land and has applied for assignment of the land, while assigning the land as per the assignment rules. The order of the Collector is under challenge

in both these original petitions at the instance of both Antoney and the Council separately.

3. Sri. Antoney would contend that since he has got the property by virtue of an order of the Court, he cannot be evicted from the property under the Land Conservancy Act. In any event, he would submit that he has already filed Ext.P4 application for assignment and therefore until Ext.P4 application for assignment is finally disposed of, he should not be dispossessed as the fact that he was in possession of the property was specifically noted by the District Collector in Ext.P6 order and the Collector had directed the Tahsildar to take into account this fact also while assigning the land.

4. The Council in their O.P. challenges the favourable observations of the District Collector in favour of Sri. Antoney to the effect that he is in possession of the land for 15-16 years and that fact should be considered while assigning the land as per Rules. The Council points out that even according to the petitioner he got actual possession of the property only on 22.1.97 and therefore the observation that Sri. Antoney was in possession of the land for over 15- 16 years is patently not correct. The Council also took objection to the observations of the District Collector that while assigning the land as per the assignment Rules, the fact that Sri. Antoney is in possession of the land and he has applied for assignment of the land should be taken into account.

5. I have considered the rival contentions in detail. One

fact which cannot be disputed in this case by the Council is that they have no case that no application for assignment of any part of the subject land is pending for consideration by the Tahsildar in so far as neither have they any pleading to that effect in their original petition, nor have they produced any evidence to that effect. The contention of the council is that as per Rule 7 of the Kerala Land Assignment Rules, members of Schedule Castes and Scheduled Tribes are entitled to preference in assignment. This argument cannot be countenanced to, for two reasons. First of all, under Rule 7(2), the preferences mentioned therein are in respect of unoccupied lands. Secondly, the reservation in favaour of scheduled Castes and Scheduled Tribes is subject to the availability of applicants. Therefore unless the Council specifically avers before me that the land is unoccupied land and any of its members has filed an application for assignment of this particular land, there is no taking into consideration any such preference as claimed by the Council does not arise.

6. Now the only question that remains to be decided is the question raised by Sri. Antoney in his original petition. Sri. Antoney has not been able to satisfy me that 30 ½ cents are comprised of puramboke land. On the other hand he also specifically admits that the same is puramboke land. The fact that he had obtained a sale deed through the Court does not make the land in question any the less puramboke land in so far as the Government of Kerala was

not a party to the suit in which the sale deed was executed in his favour by the Sub Judge. Therefore, except the 7 cents in respect of which Chothi had obtained patta Sri. Antoney cannot have any title over the 30 ½ cents in respect of Ext.P1 sale deed executed by the Sub Judge.

7. In view of my above findings, I do not find any merit in the challenge against Ext.P6 order either at the instance of Sri. Antoeny or at the instance of the council.

8. In so far as the Government does not dispute that Sri. Antoney has filed Ext.P4 application for assignment of the land in question, I deem it just and proper to direct that he should not be forcibly evicted from the land under the Kerala Land Conservancy Act, unless and until his application for assignment, Ext.P4 is finally disposed of. Therefore there would be a direction to the effect that Sri. Antoney shall not be evicted from the land in question till Ext.P4 application for assignment filed by him is finally disposed of by the third respondent. I further direct the 3rd respondent Tahsildar to dispose of Ext.P4 application as expeditiously as possible.

This Original petitions are disposed of as above.

S. SIRI JAGAN, JUDGE

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